KUOK KEET LING v. NATIONAL IRON & STEEL MILLS LTD.

[O.C.J. (Winslow J.) April 21, 1967]

[Singapore — Suit No. 615 of 1965]

Negligence — Crane driver — Voice and hand signals — Duty of care — Contributory negligence.

Tort — Negligence — Independent contractor — Employee of independent contractor injured by negligence of defendants' crane driver — Duty of care — Contributory negligence.

Damages — Hand — Crushed thumb — Amputation.

The plaintiff was an employee of independent contractors engaged by the defendants to load and unload iron bars at the defendants' factory. The iron bars were loaded by means of a crane operated by a servant of the defendants. The procedure for the loading operation was that the bars would be hoisted after the plaintiff had given a voice signal and raised his right hand. During one of these operations, the plaintiff's left thumb was severely crushed against a load of iron bars as the chain which he had fastened around them tightened when the crane driver commenced to lift the load after the plaintiff had given the voice and hand signals. The crane driver's view of the plaintiff's hands was obstructed at that time. In an action in tort for damages against the defendants, the defendants disclaimed liability on the ground that they owed no duty of care to the plaintiff who was an employee of an independent contractor.

Held: (1) the crane driver owed a duty of care to the workers on the ground engaged in the dangerous task of fastening chains from the crane around loads of iron bars in circumstances which made them depend on his skill in operating the crane;

(2) as the crane driver's view of the plaintiff's hands was obstructed, he had relied only on the voice signal in commencing the lift. He should have exercised more care in the sense that before its commencement he should have seen to it that he had a clear view of both the plaintiff's hands;

(3) the plaintiff was guilty of contributory negligence in giving the requisite signals before ensuring that the chain was properly fastened around the bars. He was therefore entitled to only 25% of the total damages.

Case referred to:—

(1) *Pike* v. *Trinity Wharf Co. Ltd.* [1957] 2 Lloyd's Rep. 122.

CIVIL SUIT.

D. G. Ironside for the plaintiff.

P. Selvadurai for the defendants.

Winslow J.: Unless otherwise stated, the facts accepted by me will appear in the course of the following judgment:

The plaintiff is the employee of independent contractors engaged by the defendants in loading and unloading iron bars at the defendants' factory, and is paid $12 per day including overtime. In the early hours of the morning of 6th January, 1965, his left thumb got caught against a load of iron bars as the chain which he had fastened around it tightened when the crane driver from above commenced to lift the load after the plaintiff had given a voice signal and raised his right hand. As a result of this his thumb was severely crushed and part of it had to be amputated at the interphalangeal joint. His fellow worker Teo Ah Kam (D.W.4), who was doing a similar operation at the other end of the bars and had completed his fastening of the chain around the load confirms that the required signals for hoisting were given by the plaintiff.

The tally clerk, Ang Yap Boon (D.W.3), employed by the defendants to count the number of bars leaving the factory, also confirms that the voice signal was given by the plaintiff. The crane-driver, Lim Lye Hock (D.W.2), an employee of the defendants, claims that both signals were given by the plaintiff before he commenced the lift. The lighting at the scene of the accident was adequate but he states that his view of the hands of the plaintiff was obstructed by the plaintiff's body as he was squatting over the bars although he had a clear view of the hands of the plaintiff's co-worker who was further away from him.

According to Ong Peng Chiang (D.W.5), a partner of the firm which employed the plaintiff, the voice signal and the hand signal should be simultaneously given before the crane-driver commences his lift. He states that this procedure had been taught to the workers on the ground by his partners and the plaintiff himself and that, on the morning in question, he himself was present off and on at the scene, though not at the time of the accident, and that, throughout the loading operations from the mid-night preceding the accident onwards, both signals were invariably given at the same time before each hoist.

I find that both signals were in fact given immediately before the accident and that the plaintiff was largely the author of his own misfortune in that he failed to ensure that the chain was properly fastened around the bars before he gave the requisite signals and that he therefore got his thumb trapped between the chain and the load when the lift began.

This does not necessarily conclude the matter, so far as the plaintiff's claim is concerned, in a decision wholly adverse to him.

It was contended on behalf of the defendants that the plaintiff, as an independent contractor or an employee of independent contractors, could not succeed in a claim in tort against the defendants as he was not their servant. There would be some merit in this contention, in my opinion, if the crane-driver had also been employed by the independent contractors, which he was not. He was an employee of the defendants and accordingly owed a duty of care to those workers on the ground who were engaged in the dangerous task of fastening chains from his crane around loads of iron bars in circumstances clearly making them dependent on his skill in operating the crane.

The case of *Pike* v. *Trinity Wharf Company, Ltd.*[1] is apposite. There the crane-driver was

an employee of the defendants whilst the plaintiff was not. The defendants were held liable for the negligence of the crane-driver in that

"He hoisted and slewed his crane at the same moment, without receiving a signal from the plaintiff, so that the hook caught in the plaintiff's clothing," etc.

Hilbery J. there said:

"The right action, of course, for the crane-driver was to be looking out through the glass panels in the front of his cabin, which was on the right side of the crane, to observe the signal given and the position of the chains and hooks, and to hoist slowly, one would have thought, until they were plainly clear of the men on the lorry, and then to swing them over the side into the barge."

The question I have had to ask myself, in the present case, is whether it was sufficient for the crane-driver to commence hoisting the load on getting the required signals without taking any further steps to ensure that he could hoist in safety having regard to all the attendant circumstances relating to the lift. The evidence is to the effect that, after fastening their respective chains around the load, each of the two workers had to move their bodies away from the load to guard against any sway at the commencement of the lift. The plaintiff's co-worker, Teo Ah Kam, claims that he held the upright chain above the hook with his right hand to "steady" the load whilst he had his left hand in readiness to ward off any swinging on the part of the load in an emergency and it is clear from the evidence of the crane-driver that Teo Ah Kam was in such a state of readiness. It was the plaintiff who gave the signals throughout the morning but the crane-driver claims that he could not see his hands clearly immediately before the accident. Teo Ah Kam, however, claims that he saw the plaintiff's left hand rising with the load to a height of 3 to 4 feet above the ground. One would have thought that, if the crane-driver had been more attentive, he should have been able to see this too. It should also be remembered that everyone was working at high speed in order to get the loads to the wharf on time and that they all were probably pretty tired by the time the accident occurred as they were approaching the end of their work on the bars.

It follows from my findings of fact that I have rejected the plaintiff's version, however sympathetic one may feel towards him for the pain and suffering he had to endure. He was an unsatisfactory witness in many ways.

I now turn to the question of the signals used. Had specific instructions been given to the crane-driver with regard to the signals and the conditions under which he could safely commence each lift, this accident could probably have been averted. But, apparently, no instructions were given to him by anybody and he had to learn to co-operate with the workers on the ground entirely from previous observation of how this kind of work had been done by other crane-drivers. It seems to me also that the fact that the voice and hand signals were always simultaneous may have led the crane-driver to assume on this occasion that the voice signal alone would suffice, which, of course, he should not have done. Although the tally clerk says that the voice signal was given everytime but that the hand signal was sometimes not given, I do not think that he was particularly observant as to this part of his evidence on hand signals as he must have spent most of his time in counting and writing.

On the whole, I am of the opinion that the crane-driver, working at the speed at which I have already said all three of them were working, commenced the hoist without paying as much attention to the conditions below as he should have done. He acted on a clear voice signal to lift and that was all with which he, on his part, was really concerned. I do not think either he or Teo Ah Kam were paying particular attention to the finality with which the hand signal was given because, as the lift began, the plaintiff's left thumb got caught under the chain and his right hand must have travelled very swiftly from a raised position to his left elbow in order to assist his left hand during the early stages of the lift. Though the plaintiff was largely to blame by his own contributory negligence the crane-driver should also have been a little more careful in the sense that he should have seen to it that he had a clear view of both the plaintiff's hands before commencing the lift, notwithstanding the signals he received. I would apportion his share of the responsibility at 25%. The plaintiff therefore succeeds to the extent of 25% of the total damages, i.e. 25% of $3,500 general damages and $500 special damages making a total sum of $1,000 with costs on the lower scale.

Order accordingly.

Solicitors: *Ironside & de Souza; Lee & Lee.*

MOHAMED ADAT & ORS. v. PUBLIC PROSECUTOR

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. & Chua J.) March 9, 1967]

[Singapore — Federal Court — Criminal Appeal No. Y. 6 of 1966]

Criminal Law and Procedure — Trial by jury — Summing up — Non-direction on accomplice evidence — Whether one accomplice can corroborate fellow accomplice.

Penal Code s. 300 — Murder — Direction to jury — Non-direction.

The four appellants were convicted by a jury of the murder of one *R* at a "pasar malam" at Trevose Crescent, Singapore on the principal evidence of five witnesses. On appeal counsel for the appellants contended that the learned trial judge erred in law because he failed to direct the jury that the five witnesses (whose evidence he described as "tainted evidence")